

105TH CONGRESS  
1ST SESSION

# H. R. 3003

To amend the Federal Deposit Insurance Act and the Federal Credit Union Act to safeguard confidential banking and credit union information, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 9, 1997

Mr. MCCOLLUM (for himself, Mr. LEACH, Mr. LaFALCE, Mrs. ROUKEMA, Mr. BEREUTER, Mr. BAKER, Mr. BACHUS, Mr. KING, Mr. ROYCE, Mr. EHR-  
LICH, Mr. BARR of Georgia, Mr. COOK, Mr. SESSIONS, Mr. HILL, and  
Mr. BONO) introduced the following bill; which was referred to the Com-  
mittee on Banking and Financial Services

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## A BILL

To amend the Federal Deposit Insurance Act and the Fed-  
eral Credit Union Act to safeguard confidential banking  
and credit union information, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

### 3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Bank Examination Re-  
5 port Protection Act of 1997”.

1 **SEC. 2. AMENDMENT TO THE FEDERAL DEPOSIT INSUR-**  
2 **ANCE ACT.**

3 The Federal Deposit Insurance Act (12 U.S.C. 1811  
4 et seq.) is amended by adding at the end the following  
5 new section:

6 **“SEC. 45. BANK SUPERVISORY PRIVILEGE.**

7 “(a) DEFINITIONS.—For purposes of this section, the  
8 following definitions shall apply:

9 “(1) DEPOSITORY INSTITUTION.—The term ‘de-  
10 pository institution’ includes—

11 “(A) any institution which is treated in the  
12 same manner as an insured depository institu-  
13 tion under paragraph (3), (4), (5), or (9) of  
14 section 8(b); and

15 “(B) any subsidiary or other affiliate of an  
16 insured depository institution or an institution  
17 described in subparagraph (A).

18 “(2) SUPERVISORY PROCESS.—The term ‘su-  
19 pervisory process’ means any activity engaged in by  
20 a Federal banking agency to carry out the official  
21 responsibilities of the agency with regard to the reg-  
22 ulation or supervision of depository institutions.

23 “(3) CONFIDENTIAL SUPERVISORY INFORMA-  
24 TION.—The term ‘confidential supervisory informa-  
25 tion’ means any of the following information, or any  
26 portion of any such information, which is treated as,

1 or considered to be, confidential information by a  
2 Federal banking agency, regardless of the medium  
3 in which the information is conveyed or stored:

4 “(A) Any report of examination, inspec-  
5 tion, visitation, or investigation, and informa-  
6 tion prepared or collected by a Federal banking  
7 agency in connection with the supervisory proc-  
8 ess, including any computer file, work paper, or  
9 similar document.

10 “(B) Any correspondence of communica-  
11 tion from a Federal banking agency to a deposi-  
12 tory institution arising from or relating to an  
13 examination, inspection, visitation, or investiga-  
14 tion by a Federal banking agency.

15 “(C) Any correspondence, communication,  
16 or document, including any compliance and  
17 other reports, created by a depository institu-  
18 tion in response to any request, inquiry, or di-  
19 rective from a Federal banking agency in con-  
20 nection with any examination, inspection, visita-  
21 tion, or investigation and provided to a Federal  
22 banking agency, other than any book or record  
23 in the possession of the depository institution  
24 routinely prepared by the depository institution  
25 and maintained in the ordinary course of busi-

1           ness or any information required to be made  
2           publicly available by any Federal law or regula-  
3           tion.

4           “(D) Any record of a Federal banking  
5           agency to the extent it contains information de-  
6           rived from any report, correspondence, commu-  
7           nication or other information described in sub-  
8           paragraph (A), (B), or (C).

9           “(b) BANK SUPERVISORY PRIVILEGE.—

10          “(1) PRIVILEGE ESTABLISHED.—

11          “(A) IN GENERAL.—All confidential super-  
12          visory information shall be the property of the  
13          Federal banking agency that created or re-  
14          quested the information and shall be privileged  
15          from disclosure to any other person.

16          “(B) PROHIBITION ON UNAUTHORIZED  
17          DISCLOSURES.—No person in possession of con-  
18          fidential supervisory information may disclose  
19          such information, in whole or in part, without  
20          the prior authorization of the Federal banking  
21          agency that created or requested the informa-  
22          tion, except for a disclosure made in published  
23          statistical material that does not disclose, either  
24          directly or when used in conjunction with pub-

1           likely available information, the affairs of any  
2           person.

3           “(C) AGENCY WAIVER.—The Federal  
4           banking agency may waive, in whole or in part,  
5           in the discretion of the agency, any privilege es-  
6           tablished under this paragraph.

7           “(2) EXCEPTION.—No provision of paragraph  
8           (1) shall be construed as preventing access to con-  
9           fidential supervisory information by duly authorized  
10          committees of the United States Congress or the  
11          Comptroller General of the United States.

12          “(c) OTHER PRIVILEGES NOT WAIVED BY DISCLO-  
13          SURE TO BANKING AGENCY.—The submission by a depos-  
14          itory institution of any information to a Federal banking  
15          agency, a State bank supervisor, or a foreign banking au-  
16          thority for any purpose in the course of the supervisory  
17          process of such agency or supervisor shall not be construed  
18          as waiving, destroying, or otherwise affecting any privilege  
19          such institution may claim with respect to such informa-  
20          tion under Federal or State law.

21          “(d) DISCOVERY AND DISCLOSURE OF INFORMA-  
22          TION.—

23                 “(1) INFORMATION AVAILABLE ONLY FROM  
24          BANKING AGENCY.—

1           “(A) IN GENERAL.—A person seeking dis-  
2           covery or disclosure, in whole or in part, of con-  
3           fidential supervisory information may not seek  
4           to obtain such information through subpoena,  
5           discovery procedures, or other process from any  
6           person, except that such information may be  
7           sought in accordance with this section from the  
8           Federal banking agency that created or re-  
9           quested the information.

10           “(B) REQUESTS SUBMITTED TO BANKING  
11           AGENCY.—Any request for discovery or disclo-  
12           sure of confidential supervisory information  
13           shall be made to the Federal banking agency  
14           that created or requested the information,  
15           which shall determine within a reasonable time  
16           period whether to disclose such information  
17           pursuant to procedures and criteria established  
18           in regulations.

19           “(2) EXCLUSIVE FEDERAL COURT JURISDIC-  
20           TION OVER DISPUTES.—

21           “(A) IN GENERAL.—Federal courts shall  
22           have exclusive jurisdiction over actions or pro-  
23           ceedings in which any party seeks to compel  
24           disclosure of confidential supervisory informa-  
25           tion.

1           “(B) JUDICIAL REVIEW.—Judicial review  
2           of the final action of a Federal banking agency  
3           with regard to the disposition of a request for  
4           confidential supervisory information shall be be-  
5           fore a district court of the United States of  
6           competent jurisdiction, subject to chapter 7 of  
7           part I of title 5, United States Code.

8           “(C) RIGHT TO APPEAL.—Any court order  
9           that compels production of confidential super-  
10          visory information may be immediately appealed  
11          by the Federal banking agency and the order  
12          compelling production shall be automatically  
13          stayed, pending the outcome of such appeal.

14          “(e) SUBPOENAS.—

15          “(1) AUTHORITY TO INTERVENE.—In the case  
16          of any action or proceeding to compel compliance  
17          with a subpoena, order, discovery request, or other  
18          judicial or administrative process with respect to any  
19          confidential supervisory information relating to any  
20          depository institution, a Federal banking agency and  
21          the depository institution may intervene in such ac-  
22          tion or proceeding for the purpose of—

23                  “(A) enforcing the limitations established  
24                  in paragraph (1) of subsections (b) and (d);

1           “(B) seeking the withdrawal of any com-  
2           pulsory process with respect to such informa-  
3           tion; and

4           “(C) registering appropriate objections  
5           with respect to the action or proceeding to the  
6           extent the action or proceeding relates to or in-  
7           volves such information.

8           “(2) Right to appeal.—Any court order that  
9           compels production of confidential supervisory infor-  
10          mation may be immediately appealed by the Federal  
11          banking agency and the order compelling production  
12          shall be automatically stayed, pending the outcome  
13          of such appeal.

14          “(f) Regulations.—

15               “(1) Authority to prescribe.—Each Federal  
16          banking agency may prescribe such regulations as  
17          the agency considers to be appropriate, after con-  
18          sultation with the other Federal banking agencies  
19          and the National Credit Union Administration  
20          Board, to carry out the purposes of this section.

21               “(2) Authority to require notice.—Any regula-  
22          tions prescribed by a Federal banking agency under  
23          paragraph (1) may require any person in possession  
24          of confidential supervisory information to notify the  
25          Federal banking agency whenever the person is



1 served with a subpoena, order, discovery request, or  
2 other judicial or administrative process requiring the  
3 personal attendance of such person as a witness or  
4 requiring the production of such information in any  
5 proceeding.

6 “(g) ACCESS IN ACCORDANCE WITH REGULATIONS  
7 AND ORDERS.—Notwithstanding any other provision of  
8 this section, the Federal banking agency may, without  
9 waiving any privilege, authorize access to confidential su-  
10 pervisory information for any appropriate governmental,  
11 law enforcement, or public purpose in accordance with  
12 agency regulations or orders.”.

13 **SEC. 3. AMENDMENT TO FEDERAL CREDIT UNION ACT.**

14 Title II of the Federal Credit Union Act (12 U.S.C.  
15 1781 et seq.) is amended by adding at the end the follow-  
16 ing new section:

17 **“SEC. 215. CREDIT UNION SUPERVISORY PRIVILEGE.**

18 “(a) DEFINITIONS.—For purposes of this section, the  
19 following definitions shall apply:

20 “(1) SUPERVISORY PROCESS.—The term ‘su-  
21 pervisory process’ means any activity engaged in by  
22 the Administration to carry out the official respon-  
23 sibilities of the Administration with regard to the  
24 regulation or supervision of credit unions.

1           “(1) CONFIDENTIAL SUPERVISORY INFORMA-  
2           TION.—The term ‘confidential supervisory informa-  
3           tion’ means any of the following information, or any  
4           portion of any such information, which is treated as,  
5           or considered to be, confidential information by the  
6           Administration, regardless of the medium in which  
7           the information is conveyed or stored:

8                   “(A) Any report of examination, inspec-  
9                   tion, visitation, or investigation, and informa-  
10                  tion prepared or collected by the Administration  
11                  in connection with the supervisory process, in-  
12                  cluding any computer file, work paper, or simi-  
13                  lar document.

14                  “(B) Any correspondence or communica-  
15                  tion from the Administration to a credit union  
16                  arising from or relating to an examination, in-  
17                  spection, visitation, or investigation by the Ad-  
18                  ministration.

19                  “(C) Any correspondence, communication,  
20                  or document, including any compliance and  
21                  other reports, created by a credit union in re-  
22                  sponse to any request, inquiry, or directive from  
23                  the Administration in connection with any ex-  
24                  amination, inspection, visitation, or investiga-  
25                  tion and provided to the Administration, other

1 than any book or record in the possession of  
2 the credit union routinely prepared by the cred-  
3 it union and maintained in the ordinary course  
4 of business or any information required to be  
5 made publicly available by any Federal law or  
6 regulation.

7 “(D) Any record of the Administration to  
8 the extent it contains information derived from  
9 any report, correspondence, communication or  
10 other information described in subparagraph  
11 (A), (B), or (C).

12 “(b) CREDIT UNION SUPERVISORY PRIVILEGE.—

13 “(1) PRIVILEGE ESTABLISHED.—

14 “(a) IN GENERAL.—All confidential super-  
15 visory information shall be the property of the  
16 Administration and shall be privileged from dis-  
17 closure to any other person.

18 “(B) PROHIBITION ON UNAUTHORIZED  
19 DISCLOSURES.—No person in possession of con-  
20 fidential supervisory information may disclose  
21 such information, in whole or in part, without  
22 the prior authorization of the Administration,  
23 except for a disclosure made in published statis-  
24 tical material that does not disclose, either di-

1 rectly or when used in conjunction with publicly  
2 available information, the affairs of any person.

3 “(C) AGENCY WAIVERS.—The Board may  
4 waive, in whole or in part, in the discretion of  
5 the Board, any privilege established under this  
6 paragraph.

7 “(2) EXCEPTION.—No provision of paragraph  
8 (1) shall be construed as preventing access to con-  
9 fidential supervisory information by duly authorized  
10 committees of the United States Congress or the  
11 Comptroller General of the United States.

12 “(c) OTHER PRIVILEGES NOT WAIVED BY DISCLO-  
13 SURE TO ADMINISTRATION.—The submission by a credit  
14 union of any information to the Administration or a State  
15 credit union supervisor for any purpose in the course of  
16 the supervisory process of the Administration or such su-  
17 pervisor shall not be construed as waiving, destroying, or  
18 otherwise affecting any privilege such institution may  
19 claim with respect to such information under Federal or  
20 State law.

21 “(d) DISCOVERY AND DISCLOSURE OF INFORMA-  
22 TION.—

23 “(1) INFORMATION AVAILABLE ONLY FROM AD-  
24 MINISTRATION.—

1           “(a) IN GENERAL.—A person seeking dis-  
2           covery or disclosure, in whole or in part, of con-  
3           fidential supervisory information may not seek  
4           to obtain such information through subpoena,  
5           discovery procedures, or other process from any  
6           person, except that such information may be  
7           sought in accordance with this section from the  
8           Administration.

9           “(B) REQUEST SUBMITTED TO ADMINIS-  
10          TRATION.—Any request for discovery or disclo-  
11          sure of confidential supervisory information  
12          shall be made in the Administration, which  
13          shall determine within a reasonable time period  
14          whether to disclose such information pursuant  
15          to procedures and criteria established in regula-  
16          tions.

17          “(2) EXCLUSIVE FEDERAL COURT JURISDIC-  
18          TION OVER DISPUTES.—

19          “(A) IN GENERAL.—Federal courts shall have  
20          exclusive jurisdiction over actions or proceed-  
21          ings in which any party seeks to compel disclo-  
22          sure of confidential supervisory information.

23          “(B) JUDICIAL REVIEW.—Judicial review of the  
24          final action of the Administration with regard  
25          to the disposition of a request for confidential

1 supervisory information shall be before a dis-  
2 trict court of the United States of competent  
3 jurisdiction, subject to chapter 7 of part I of  
4 title 5, United States Code.

5 “(C) RIGHT TO APPEAL.—Any court order  
6 that compels production of confidential super-  
7 visory information may be immediately appealed  
8 by the Administration and the order compelling  
9 production shall be automatically stayed, pend-  
10 ing the outcome of such appeal.

11 “(e) SUBPOENAS.—

12 “(1) AUTHORITY TO INTERVENE.—In the case  
13 of any action or proceeding to compel compliance  
14 with a subpoena, order, discover request, or other ju-  
15 dicial or administrative process with respect to any  
16 confidential supervisory information relating to any  
17 credit union, the Administration and the credit  
18 union may intervene in such action or proceeding for  
19 the purpose of—

20 “(A) enforcing the limitations established  
21 in paragraph (1) of subsections (b) and (d);

22 “(B) seeking the withdrawal of any com-  
23 pulsory process with respect to such informa-  
24 tion; and

1           “(C) registering appropriate objections  
2           with respect to the action or proceeding to the  
3           extent the action or proceeding relates to or in-  
4           volves such information.

5           “(2) RIGHT TO APPEAL.—Any court order that  
6           compels production of confidential supervisory infor-  
7           mation may be immediately appealed by the Admin-  
8           istration and the order compelling production shall  
9           be automatically stayed, pending the outcome of  
10          such appeal.

11          “(f) REGULATIONS.—

12           “(1) AUTHORITY TO PRESCRIBE.—The Board  
13           may prescribe such regulations as the Board consid-  
14           ers to be appropriate, after consultation with the  
15           Federal banking agencies (as defined in section 3 of  
16           the Federal Deposit Insurance Act), to carry out the  
17           purposes of this section.

18           “(2) AUTHORITY TO REQUIRE NOTICE.—Any  
19           regulations prescribed by the Administration under  
20           paragraph (1) may require any person in possession  
21           of confidential supervisory information to notify the  
22           Administration whenever the person is served with a  
23           subpoena, order, discovery request, or other judicial  
24           or administrative process requiring the personal at-  
25           tendance of such person as a witness or requiring

1       the production of such information in any proceed-  
2       ing.

3       “(g) ACCESS IN ACCORDANCE WITH REGULATIONS  
4 AND ORDERS.—Notwithstanding any other provision of  
5 this section, the Administration may, without waiving any  
6 privilege, authorize access to confidential supervisory in-  
7 formation for any appropriate governmental, law enforce-  
8 ment, or public purpose in accordance with agency regula-  
9 tions or orders.”.

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